



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

MOP/162784

PRELIMINARY RECITALS

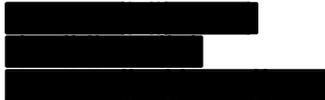
Pursuant to a petition filed December 18, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Calumet County Department of Human Services in regard to Medical Assistance, a hearing was held on January 20, 2015, at Chilton, Wisconsin. A hearing originally scheduled for January 8, 2015, was rescheduled at petitioner's request.

The issue for determination is whether the respondent correctly established an overpayment of Medical Assistance (MA) benefits to the petitioner.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Sarah Sweere

Calumet County Department of Human Services
206 Court Street
Chilton, WI 53014-1198

ADMINISTRATIVE LAW JUDGE:

Peter McCombs
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Calumet County.
2. Petitioner received MA BadgerCare Plus (BC+) for herself and her minor child, DG, in Calumet County during the overpayment period of June 1, 2014 – December 31, 2014.

3. Petitioner reported on her Six Month Report form in June, 2014, that she and MG were living together as of May 1, 2014. MG is the father of DG.
4. As the father of DG, MG must be included in the BC+ household while residing with petitioner and DG.

### DISCUSSION

Under BC+ anyone in the home who meets the criteria of being in the BC Plus test group is always included in the group whether or not he or she requested BC Plus. BC Plus Handbook, § 2.2. A co-parent is always part of the BC Plus group under this policy, even if there are other children in the household who are not his. Handbook, § 2.2.1. This policy mirrors the Wisconsin Administrative Code definition of “fiscal test group” found at Wis. Admin. Code, §DHS 101.03(65).

MA overpayment recovery is authorized by Wis. Stat., §49.497(1):

(a) The department may recover any payment made incorrectly for benefits provided under this subchapter or s. 49.665 if the incorrect payment results from any of the following:

1. A misstatement or omission of fact by a person supplying information in an application for benefits under this subchapter or s. 49.665.
2. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report the receipt of income or assets in an amount that would have affected the recipient's eligibility for benefits.
3. The failure of a Medical Assistance or Badger Care recipient or any other person responsible for giving information on the recipient's behalf to report any change in the recipient's financial or nonfinancial situation or eligibility characteristics that would have affected the recipient's eligibility for benefits or the recipient's cost-sharing requirements.

See also the department's BC+ Handbook, § 28.2. The overpayment must be caused by the client's error. Overpayments caused by agency error are not recoverable.

Petitioner does not dispute the calculations or that the father lived with her. She did testify that MG was timely reported in the home on her SMRF, and further asserted that he did not share in any of the BC+ benefits. She further testified that she was not aware of the paternity results until December, 2014, and that she was never informed that MG needed to be included in her FS household.

The petitioner argues that it is not her fault that the overpayment occurred, as she provided information to the respondent indicating that MG was living with her and DG. Respondent's electronic Case Comment dated June 11, 2014, states:

Processed June SMRF received 6/6. Client states [MG] ...moved in on 5/1. ... Client states she does not eat with Mark. He is not the father to her child, did not add to case at this time. ...

Exhibit A.

The record does not establish whether anyone ever questioned the fact that DG and MG have the same last name, or how the Case Comment author received the information indicating that MG was not the

father of DG. Unlike FoodShare overpayments, recovery of BC+ overpayments is only permitted when the overpayment arose due to client error. The respondent has not established client error in this case. There is no evidence that the petitioner ever lied to the respondent regarding her BC+ household composition or income. Nor is there evidence that petitioner failed to provide such information. On the contrary, petitioner reported to the respondent that she and MG were living together as of May 1, 2014. The respondent did not refute petitioner's testimony that petitioner was not informed of DG's paternity until December of 2014. As such, the respondent has failed to establish that petitioner knew that MG was DG's father when she reported residing with him in May, 2014.

I conclude that the respondent has failed to establish that client error led to the BC+ overpayment alleged here. The respondent must demonstrate more than a simple assertion that an overpayment occurred; if must establish that the overpayment was the result of a misstatement, omission of fact, or failure to provide information by the petitioner. Wis. Stat. §49.497(1) The record before me fails to accomplish that.

### CONCLUSIONS OF LAW

The agency has failed to establish that the asserted BC+ overpayment claim, no. [REDACTED], was the result of the petitioner's misstatement, omission of fact, or failure to provide information.

**THEREFORE, it is**

**ORDERED**

That the matter be remanded to the county with instructions to rescind BC+ overpayment claim no. [REDACTED]. All actions required by this Order shall be completed within 10 days following issuance of this Decision.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 10th day of February, 2015.

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\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin \DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 10, 2015.

Calumet County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability